

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

-----oo0oo-----

JEANNETTE TURNER, SHANA GUIOL,  
GREG GUIOL, TIANA MONTALFO, and  
KEN McCARTY,

Plaintiffs,

v.

COUNTY OF TEHAMA, DAVID GREER,  
and DAVID HENCRAFT,

Defendants.

No. 2:21-cv-01131 WBS DMC

ORDER RE: MOTION TO DISMISS  
COMPLAINT

-----oo0oo-----

Plaintiff Jeannette Turner and her children, Shana Guiol, Greg Guiol, Tiana Montalfo, and Ken McCarty, brought this action against Tehama County, David Greer, and David Hencraft under 42 U.S.C. § 1983 for alleged violations of constitutional rights and for infliction of emotional distress under California law. (See Compl. (Docket No. 1).) Plaintiffs allege defendants improperly searched Turner's home, arrested her, and sought her prosecution for perjury without legal justification, leading to her conviction, in violation of her Fourth Amendment rights and

1 of plaintiffs' First Amendment right to familial association.  
2 (See id.) Plaintiffs brought this action after Turner's perjury  
3 conviction was overturned in 2020. (See id.) Defendants now  
4 move to dismiss the complaint. (See Mot. (Docket No. 8-1).)

5 I. Factual and Procedural Background

6 Plaintiff Turner moved to Tehama County in 1995.  
7 (Compl. at ¶¶ 1, 6.) She previously qualified as a Supplemental  
8 Security Income ("SSI") recipient, but her SSI benefits were  
9 suspended pending appeal. (Id. at ¶ 5.) In June of 1995, the  
10 County required Turner to re-apply for SSI and Aid to Families  
11 with Dependent Children ("AFDC") benefits. (Id. at ¶¶ 6-7.)

12 Based on alleged contradictions between her AFDC  
13 application and loan applications, in February of 1996 defendants  
14 sought perjury charges against Turner. (Id. at ¶¶ 9, 11.) The  
15 Tehama District Attorney's Office charged her with perjury, and  
16 she was arrested and jailed. (Id. at ¶ 11.) In July of 1996,  
17 defendant Greer and others sought a search warrant to support the  
18 charge, and Greer, defendant Hencraft, and others executed the  
19 warrant at Turner's home and again arrested Turner. (Id. at ¶¶  
20 13-14.)

21 Plaintiffs allege that, despite Turner's proof of  
22 entitlement to the benefits for which she had applied,<sup>1</sup> the  
23 District Attorney's office continued to pursue the perjury charge  
24 "at the urging" of Greer, Hencraft, and others, who "misled" the  
25 District Attorney's office by providing "false evidence." (Id.  
26 at ¶ 16.) Turner was convicted of perjury in October of 1996.

---

27 <sup>1</sup> Her appeal of the suspension of benefits was granted in  
28 June of 1996, and her were benefits reinstated. (Id. at ¶ 12.)

1 (Id. at ¶¶ 16, 18.) On November 14, 1996, Greer obtained a bench  
2 warrant for her arrest because she was late to a required court  
3 appearance, and he arrested her upon her arrival. (Id. at ¶ 18.)

4 In February of 1997, Turner was sentenced to three  
5 years in prison, a sentence that was stayed pending appeal. (Id.  
6 at ¶ 19.) While the appeal was pending, she was charged with  
7 drug possession based on methamphetamine allegedly found in her  
8 closet during the July 1996 search of her home, to which she pled  
9 guilty. (Id. at ¶¶ 20-21.) In February of 1998, she was jailed  
10 again for one day, and although no charges were filed, her car  
11 was impounded and she had to pay to retrieve it. (Id. at ¶ 23.)<sup>2</sup>

12 Turner began serving her sentence in April of 1998 and  
13 was released from prison by "the early 2000s." (Id. at ¶¶ 24,  
14 28.) In 2017, California enacted Penal Code section 1473.7,  
15 which allowed post-conviction relief for defendants with new  
16 evidence of their innocence and extended the available time to  
17 prove it. (Id. at ¶ 30.) Pursuant to section 1473.7, on June  
18 10, 2020, the Tehama County Superior Court ordered that Turner's  
19 perjury conviction be overturned. (Id. at ¶ 33.)<sup>3</sup> Plaintiffs  
20 brought this action on June 25, 2021. (See Compl.)

## 21 II. Discussion

22 The inquiry in addressing a Rule 12(b)(6) motion is  
23 whether, taking the allegations in the complaint as true and  
24

---

25 <sup>2</sup> Plaintiffs have not indicated why Turner was jailed on  
this occasion or whether it relates to the other noted charges.

26 <sup>3</sup> Plaintiffs' filings do not state the basis for Turner's  
27 conviction being overturned, though at oral argument plaintiffs'  
28 counsel stated that it was because the false statements in her  
benefits application were immaterial to her actual eligibility.

1 drawing all reasonable inferences in the plaintiff's favor, the  
2 complaint has alleged "sufficient facts . . . to support a  
3 cognizable legal theory," Navarro v. Block, 250 F.3d 729, 732  
4 (9th Cir. 2001), and thereby stated "a claim to relief that is  
5 plausible on its face," Bell Atl. Corp. v. Twombly, 550 U.S. 544,  
6 570 (2007). Courts are not, however, "required to accept as true  
7 allegations that are merely conclusory, unwarranted deductions of  
8 fact, or unreasonable inferences." Spewell v. Golden State  
9 Warriors, 266 F.3d 979, 988 (9th Cir. 2001) (citation omitted).

10 The complaint contains claims for violation of  
11 plaintiffs' First Amendment right to familial association and for  
12 infliction of emotional distress. (See Compl.) It also refers  
13 to their Fourth, Fifth, and Fourteenth Amendment rights, and its  
14 cover sheet lists the cause of action as "wrongful prosecution &  
15 search." (See id. at ¶¶ 4, 40; Docket No. 1-1.) The inclusion  
16 of the County also indicates that plaintiffs intend to assert a  
17 claim for municipal liability under Monell. (See Compl.)

18 A. Constitutional Claims

19 Defendants argue that plaintiffs' claims, which are  
20 based on events that took place in the 1990s, are barred by the  
21 applicable statute of limitations. (See Mot. at 12-15.) The  
22 statute of limitations for a § 1983 claim is based on state law,  
23 Wallace v. Kato, 549 U.S. 384, 387 (2007), which in California is  
24 two years, Jackson v. Barnes, 749 F.3d 755, 761 (9th Cir. 2014).

25 However, "a § 1983 cause of action for damages  
26 attributable to an unconstitutional conviction or sentence does  
27 not accrue until the conviction or sentence has been  
28 invalidated." Heck v. Humphrey, 512 U.S. 477, 489-90 (1994).

1 Since Turner's perjury conviction was overturned on June 10,  
2 2020, any § 1983 claim attributable to her conviction did not  
3 accrue until that date and therefore was not time-barred when  
4 this action commenced. See id. at 486-90. Conversely, any claim  
5 not so attributable is now barred by the statute of limitations.

6 1. Fourth Amendment – Unlawful Search and Seizure

7 The complaint alleges defendants improperly obtained  
8 and executed a search warrant at Turner's home in July of 1996.  
9 (See Compl. at ¶¶ 13-14.) The only fruit of this search noted in  
10 the complaint, however, was methamphetamine, for which Turner was  
11 separately convicted of possession. (Id. at ¶ 20.) Because the  
12 complaint does not allege that this conviction has been  
13 overturned, a finding that the search was unconstitutional would  
14 violate Heck, and thus plaintiffs' challenge is barred.<sup>4</sup>

15 2. Fourth Amendment – Wrongful/Malicious Prosecution

16 Defendants concede the malicious prosecution claim is  
17 not time-barred because it did not accrue until 2020, when  
18 Turner's conviction was overturned. (See Reply at 2 (Docket No.  
19 12).) Even so, plaintiffs fail to plead sufficient facts showing  
20 any defendant caused Turner's prosecution, a required element of  
21 any § 1983 claim. See Hydrick v. Hunter, 669 F.3d 937, 942 (9th  
22 Cir. 2012); Jones v. Williams, 297 F.3d 930, 934 (9th Cir. 2002).

23 When a plaintiff is arrested pursuant to a prosecutor's  
24 decision to bring charges, that decision is often "a superseding

---

25 <sup>4</sup> Plaintiffs challenge the impoundment of Turner's car,  
26 (Compl. at ¶ 23.), but offer no indication of how this claim is  
27 not time-barred. Their opposition also asserts that Turner  
28 "suffered a warrantless search that led to her first arrest and  
charges of perjury in February of 1996," (Opp. at 10), but no  
such search is alleged in the complaint.

1 or intervening cause of [the] constitutional tort plaintiff's  
2 injury, precluding suit against the officials who made an arrest  
3 or procured a prosecution." See Beck v. City of Upland, 527 F.3d  
4 853, 862 (9th Cir. 2008). This is due to "a rebuttable  
5 presumption that a prosecutor exercises independent judgment  
6 regarding the existence of probable cause in filing a complaint."  
7 Smiddy v. Varney, 803 F.2d 1469, 1471 (9th Cir. 1986) (citation  
8 omitted). This presumption may be rebutted, however, if

9 the prosecutor was pressured by police or was  
10 given false information; the police 'act[ed]  
11 maliciously or with reckless disregard for the  
12 rights of an arrested person'; the prosecutor  
13 'relied on the police investigation and arrest  
14 when he filed the complaint instead of making an  
independent judgment on the existence of probable  
cause for the arrest'; or the officers 'otherwise  
engaged in wrongful or bad faith conduct that was  
actively instrumental in causing the initiation  
of legal proceedings.'

15 Beck, 527 F.3d at 862-63 (citations omitted).

16 Many of the allegations regarding defendants' role in  
17 Turner's prosecution are conclusory and unsupported by averments  
18 of fact. For example, plaintiffs allege Greer and Hencraft  
19 prompted the decision to prosecute Turner by "urging" the  
20 district attorney to do so and by "misle[ading]" her with "false  
21 evidence." (Compl. at ¶ 16.) However, plaintiffs do not  
22 indicate what the alleged false evidence defendants provided was.

23 Further, although the complaint suggests probable cause  
24 to prosecute Turner was lacking because the false information in  
25 her benefits application was immaterial to her eligibility, (see  
26 id. at ¶¶ 5-17), it does not allege that Greer and Hencraft had  
27 exclusive possession of this information and withheld it from the  
28 district attorney, causing her to be unaware that probable cause

1 was lacking, see Beck, 527 F.3d at 862-63. And while plaintiffs'  
2 opposition states that defendants failed to disclose the fact  
3 that Turner qualified for SSI benefits "when seeking a search  
4 warrant," (Opp. at 13) -- a detail not alleged in the complaint -  
5 - it does not state that they prevented the district attorney  
6 from learning of Turner's actual qualification status.<sup>5</sup>

7 Accordingly, the complaint fails to state a claim for  
8 malicious prosecution under § 1983.

9 3. First Amendment - Interference with Familial  
10 Association

11 Plaintiffs also allege they were wrongfully separated  
12 while Turner was incarcerated, in violation of their First  
13 Amendment right to familial association. (See Compl. at ¶ 40.)

14 Although the Ninth Circuit has recognized claims under  
15 the First Amendment "for unwarranted interference with the right  
16 to familial association," Keates v. Koile, 883 F.3d 1228, 1236  
17 (9th Cir. 2018) (citation omitted), neither the parties nor the  
18 court have identified precedent evaluating such claims under  
19 these circumstances. Even so, plaintiffs' First Amendment claim  
20 is likewise deficient because the complaint fails to plausibly  
21 allege that defendants caused Turner's incarceration, as it does  
22 not plead facts showing they, and not the District Attorney, were  
23 responsible for her prosecution. See Hydrick, 669 F.3d at 942.  
24 As such, this claim must also be dismissed.

---

25 <sup>5</sup> Because the complaint does not indicate why Turner's  
26 conviction was overturned, any malicious prosecution claim also  
27 fails because such claims must allege that the prosecution or  
28 conviction was terminated in a way reflecting the defendant's  
innocence. See Mills v. City of Covina, 921 F.3d 1161, 1170-71  
(9th Cir. 2019).

1                   4.     Fourteenth Amendment

2                   Plaintiffs' only reference to the Fourteenth Amendment  
3 relates to jurisdiction. (See Compl. at ¶ 4.) However, "[w]here  
4 government behavior is governed by a specific constitutional  
5 amendment, claims under section 1983 alleging unlawful government  
6 action must be evaluated under that specific constitutional  
7 provision," rather than under the Fourteenth Amendment. Sanchez  
8 v. City of Fresno, 1:12-cv-428 LJO SKO, 2014 WL 204058, at \*5  
9 (E.D. Cal. May 16, 2014) (citing Albright v. Oliver, 510 U.S.  
10 266, 273 (1994)). Because plaintiffs' claims arise under the  
11 First and Fourth Amendments, they must be assessed thereunder.  
12 The court will therefore dismiss the Fourteenth Amendment claim.<sup>6</sup>

13                   5.     Municipal Liability

14                   A municipality may be held liable under § 1983 only  
15 when execution of one of its policies or customs causes violation  
16 of a plaintiff's constitutional rights. Monell v. Dep't of Soc.  
17 Servs. of City of N.Y., 436 U.S. at 694. For such claims, a  
18 complaint must identify "facts regarding the specific nature of  
19 th[e] alleged 'policy, custom[,] or practice.'" A.E. ex rel.  
20 Hernandez v. Cnty. of Tulare, 666 F.3d 631, 637 (9th Cir. 2012).

21                   Plaintiffs' complaint does not specify what "policy,  
22 custom, or practice" they claim caused the alleged violations or  
23 indicate which rights such policy or custom violated. See id.  
24 Although their opposition states that they seek to challenge the  
25 County's misapplication of regulations in determining Turner's

---

26                   <sup>6</sup>     The complaint also references the Fifth Amendment in  
27 noting jurisdiction. (See Compl. at ¶ 4.) Because plaintiffs do  
28 not otherwise mention this amendment, nor is an alleged Fifth  
Amendment violation apparent, the court will not address it here.



1 eligibility for benefits, (see Opp. at 13-14), this is not stated  
2 in the complaint. Nor do plaintiffs allege facts showing such  
3 misapplication amounted to a "practice[ ] . . . so permanent and  
4 well settled as to constitute a 'custom or usage' with the force  
5 of law," Monell, 436 U.S. at 691 (citation omitted), as it must  
6 to state a Monell claim.<sup>7</sup> The court will therefore grant the  
7 motion to dismiss plaintiffs' § 1983 claims against the County.

8 B. State Law Claims

9 The complaint also alleges that "the employees of the  
10 county," through "their conduct," "caused emotional distress to  
11 each of the plaintiffs." (Compl. at ¶¶ 43.) California law  
12 provides for two kinds of tort claims premised on infliction of  
13 emotional distress: intentional infliction of emotional distress  
14 and negligent infliction of emotional distress. See Huntingdon  
15 Life Scis., Inc. v. Stop Huntingdon Animal Cruelty USA, Inc., 129  
16 Cal. App. 4th 1228, 1259, 1264 (4th Dist. 2005).

17 To state a claim for intentional infliction, "a  
18 plaintiff must show: (1) outrageous conduct by the defendant; (2)  
19 the defendant's intention of causing or reckless disregard of the  
20 probability of causing emotional distress; (3) the plaintiff's  
21 suffering severe . . . emotional distress; and (4) actual and  
22 proximate causation." Id. at 1259. Negligent infliction of  
23 emotional distress, on the other hand, is simply a species of the  
24 tort of negligence. Lawson v. Mgmt. Activities, Inc., 69 Cal.  
25 App. 4th 652, 656 (4th Dist. 1999). As with any negligence  
26

---

27 <sup>7</sup> Nor would such allegations show how plaintiffs' Monell  
28 claim -- based on events in the 1990s -- is not time-barred.


1 claim, a plaintiff must allege "the traditional elements of duty,  
2 breach of duty, causation, and damages." Id. at 657 (internal  
3 quotation marks and citation omitted).

4 Here, plaintiffs' complaint fails to provide even the  
5 most basic details such as (1) which defendants are being sued on  
6 each claim, (2) for what particular conduct each is being sued,  
7 (3) which plaintiffs were affected by that conduct and how it  
8 harmed them (beyond the vague allegation that "each of the  
9 plaintiffs" suffered "emotional distress"), and (4) how the  
10 particular harm those plaintiffs suffered is directly  
11 attributable to specific conduct by particular defendants. Nor  
12 are facts supporting the other elements of either claim alleged.  
13 As such, plaintiffs' state law claims for intentional and/or  
14 negligent infliction of emotional distress must be dismissed.

15 IT IS THEREFORE ORDERED that defendants' motion to  
16 dismiss plaintiffs' complaint (Docket No. 8) be, and the same  
17 hereby is, GRANTED.

18 Plaintiffs have twenty days from the date of this Order  
19 to file an amended complaint, if they can do so consistent with  
20 this Order.

21 Dated: February 9, 2022

  
22 **WILLIAM B. SHUBB**  
23 **UNITED STATES DISTRICT JUDGE**